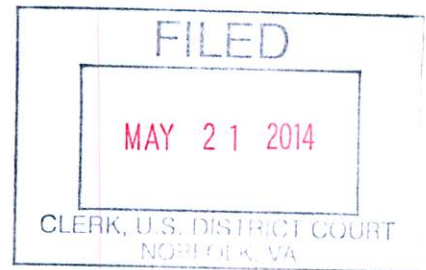


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



NATHAN P. CHAMBLISS, #1426637,

Petitioner,

v.

ACTION NO. 2:13cv386

HAROLD W. CLARKE,
Director, Virginia Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, has submitted a *pro se* Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. ECF No. 1. The petition alleges violation of federal rights pertaining to Petitioner's plea hearing held on March 22, 2010, in the Circuit Court for the County of Fairfax. Petitioner pled guilty to abduction, attempted robbery, and use of a firearm in the commission of a felony, and was sentenced to serve eight years in the Virginia penal system with five years of probation.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The Report and Recommendation filed April 2, 2014, recommends dismissal of the petition without prejudice to Petitioner's right to file a subsequent petition for writ of habeas corpus after exhausting state remedies with respect to the one unexhausted ground, Ground (B). ECF No. 21. Alternatively, Petitioner was given the opportunity to withdraw Ground (B) and have the Court address the remaining exhausted grounds. Each party was advised of his right to file written objections to the

findings and recommendations made by the Magistrate Judge.

On April 10, 2014, the Court received Petitioner's objections to the Report and Recommendation. ECF No. 22. Petitioner objected to the Report and Recommendation's finding that his petition presents an unexhausted claim. Pet'r's Obj. 2. Petitioner asserts he raised the claim before the Supreme Court of Virginia, and that the Supreme Court waived the exhaustion requirement by "bypassing" his claim. Pet'r's Obj. 4-5. Petitioner has a misunderstanding of the impact of the Supreme Court of Virginia's opinion granting his belated appeal and dismissing the remaining claims in his state habeas petition without prejudice. The dismissal without prejudice meant the Supreme Court of Virginia did not address the claims. Instead, the Supreme Court of Virginia gave Petitioner the right to present the habeas claims again after completion of his direct appeal, for a full consideration of the claims.


The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation. It is, therefore, ORDERED that Respondent's Motion to Dismiss (ECF No. 14) be GRANTED in part, and the Petition for a Writ of Habeas Corpus (ECF No. 1) be DISMISSED without prejudice to Petitioner's right to file a subsequent petition for writ of habeas corpus after exhausting state remedies.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," and the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

Petitioner is hereby notified that he may appeal from the judgment entered pursuant to this Final Order by filing a *written* notice of appeal with the Clerk of this Court, United States

Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of the Judgment.

The Clerk shall mail a copy of this Final Order to Petitioner and counsel of record for Respondent.



/s/ Arenda L. Wright Allen
United States District Judge

Arenda L. Wright Allen
United States District Judge

Norfolk, Virginia
May 21st 2014